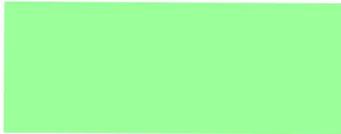




**U.S. Citizenship
and Immigration
Services**

(b)(6)



Date: **SEP 10 2014**

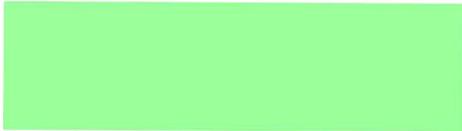
Office: MIAMI, FL

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IN RE: 

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Miami, Florida Field Office (the director) denied the Application for Certificate of Citizenship (Form N-600), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further proceedings consistent with this decision and entry of a new decision.

Pertinent Facts and Procedural History

The applicant was born to married parents in Morocco on [REDACTED] 1989. Her parents are divorced, and her mother is not a U.S. citizen.¹ The applicant was admitted into the United States as a lawful permanent resident on July 27, 2000, when she was 11 years old, based on an immigrant visa petition filed by her U.S. citizen stepmother.² The applicant's father became a naturalized U.S. citizen on September 3, 2005, when the applicant was 16 years old. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that she derived U.S. citizenship through her father.

The director determined, in a decision dated May 17, 2013, that the applicant failed to submit requested divorce translation evidence for her biological parents. The director indicated that evidence in the record raised the possibility that the applicant's father was not divorced when he married the applicant's stepmother in 1997, and that the applicant may therefore have been ineligible to obtain an immigrant visa through her stepmother, and to adjust status to that of a lawful permanent resident. The application was denied accordingly. Through counsel, the applicant submits a divorce decree translation on appeal, indicating that the applicant's parents' divorce occurred on August 23, 1995.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d. Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

Applicable Law

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), applies to the applicant's U.S. citizenship claim. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Section 320 of the Act provides, in pertinent part, that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

¹ The record contains conflicting divorce decree translations for the applicant's parents, with one indicating that her parents divorced in 1995, and another indicating that they divorced in 1998.

² The applicant's father married the applicant's U.S. citizen stepmother on September 19, 1997. They divorced on May 30, 2007.

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

The burden of proof is on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c).

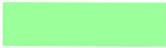
Legal custody vests “[b]y virtue of either a natural right or a court decree.” *Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). In the absence of a judicial determination or grant of custody in a case of a legal separation of the naturalized parent, the parent having actual, uncontested custody of the child is to be regarded as having *legal custody*. See *Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950).

Section 101(a)(20) of the Act, 8 U.S.C. § 1101(a)(20) defines the term *lawfully admitted for permanent residence* as, “[t]he status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.” “[L]awfully denotes compliance with substantive legal requirements, not mere procedural regularity.” See *Arellano-Garcia v. Gonzales*, 429 F.3d 1183, 1186 (8th Cir. 2005) (quotations and citations omitted.) The term *lawfully admitted for permanent residence* does not apply to aliens who “obtained their permanent residence by fraud, or had otherwise not been entitled to it.” *Id.* at 1187

Section 246(a) of the Immigration and Nationality Act (the Act) establishes a five-year statute of limitation on the Secretary's power to rescind erroneously granted adjustments of status; however, the five-year limitation of section 246(a) of the Act does not extend to removal proceedings. See generally, *Asika v. Ashcroft*, 362 F.3d 264 (4th Cir. 2004); *Stolaj v. Holder*, 577 F.3d 651 (6th Cir. 2009); *Kim v. Holder*, 560 F.3d 833 (8th Cir. 2009).

Analysis

The director denied the applicant's Form N-600 because she failed to submit requested divorce translations for her parents' divorce and, therefore, the record did not show that her father's marriage to her stepmother, through whom the applicant obtained her lawful permanent residency, was valid. Notwithstanding the director's questions regarding the validity of the applicant's father and stepmother's marriage, the definition of “*lawfully admitted for permanent residence*” at 8 C.F.R. § 1.2 provides that “[s]uch status terminates upon entry of a final administrative order of exclusion, deportation, or removal.” The applicant has not been placed into removal proceedings before the immigration court and there is no evidence that the applicant's lawful permanent residency has been terminated. Accordingly, the applicant meets the requirement that she be lawful permanent resident, as set forth in section 320(a)(3). She also meets the requirement that she was admitted as a lawful permanent resident before she turned 18; moreover, naturalization



certificate evidence contained in the record reflects that the applicant's father became a U.S. citizen in 2005, when the applicant was under the age of 18. The applicant therefore also satisfies the requirements set forth in section 320(a)(1).

The director's decision did not address whether the evidence demonstrated that the applicant resided in the United States in the legal and physical custody of her U.S. citizen father prior to her 18th birthday, as required by section 320(a)(3) of the Act. As the director failed to fully consider the applicant's eligibility for U.S. citizenship under section 320 of the Act, the decision must be withdrawn and the matter remanded for entry of a new decision.

Conclusion

The director's May 17, 2013 decision is withdrawn. The matter is remanded to the director for further action consistent with this decision.

ORDER: The matter is remanded to the director for further proceedings consistent with this decision and entry of a new decision which, if adverse to the applicant, shall be certified to the AAO for review.